IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.03.2010
CORAM:
THE HON□BLE MR.JUSTICE K.CHANDRU
W.P.Nos.15603 to 15607 of 1996

W.P.No.15603 of 1996

V.Soundararajan ...Petitioner
Vs

1.The Presiding Officer,
Labour Court, Coimbatore.

2.M/s.Akshya Textile Ltd.,
P.B.No.2008,
Ganapathi (Post)
Coimbatore. ...Respondents

Prayer :Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified mandamus, calling for the records pertaining to ID 273 of 1987 and quash the award dated 5.1.1994 passed by the first respondent in the said case and direct the second respondent to reinstate the petitioner with continuity of service, full backwages and with all other benefits.

For Petitioners : Mr.M.Govindaraj

For Respondents : Mr.Sanjay Mohan for
M/s.Ramasubramaniam and Associates
for R2

C O M M O N O R D E R
These five writ petitions were filed by the workmen challenging the Award passed by the first respondent - Labour Court, Coimbatore by a common Award dated 05.01.1994.

2. The workmen were admittedly employed as Badlis in the second respondent □ Akshya Textile Ltd. They claimed that they were dismissed from service from 01.12.1984. Thereafter, an industrial dispute was raised before the conciliation officer. Subsequently on the strength of the failure report, the matter was referred for adjudication by the Labour Court. The reference that was made was "Whether the non-employment of the concerned workers was justified? If not to what relief they are entitled to." The Labour Court took up those disputes as I.D.Nos.239 to 241, 273 and 275 of 1987 and issued notice to the Management.

3. The grievance of the workmen was that their services were terminated on the ground that they were absent for 8 consecutive days from 01.03.1984. However, the workmen attempted to justify their stand by stating that even after the period of alleged absence, they had worked in the mills. However, the Labour Court by its common Award held that they were not entitled for reinstatement but only eligible for a lump sum amount of Rs.2,000/-. Aggrieved by the said Award, the Workmen

filed two writ petitions before this Court being W.P.No.10975 of 1989 and W.P.No.10918 of 1990. This Court by an order dated 08.09.1993 allowed those two writ petitions and set aside the impugned Award and directed for their fresh disposal. It was held that the parties must be allowed to adduce evidence to establish their respective cases and by giving liberty to both sides to lead evidence, the matters were remanded. On such remand, the Labour Court once again tried the issue.

4. Before the Labour Court, on behalf of the workmen, they filed 38 documents and were marked as Exs.W1 to W38. On the side of the second respondent -Management 9 documents were filed and marked as Exs.M1 to M9. While the workmen examined one Sundararajan (writ petitioner in W.P.No.15603 of 1996) as W.W.1. On the side of the Management, one Venkatesan was examined as M.W.1.

5. The Labour Court by its common Award dated 05.01.1994 held that the workmen were not paid fixed monthly salary. Only when the permanent workers were absent, they worked as a substitute in those vacancies. It was only when there was vacancies, their services were utilised. The Labour Court also held that there was surplus of permanent workers and therefore, there was no guarantee that the workmen will be given employment. It was also held that in the peculiar facts and circumstances of the case, if compensation is given, in lieu of re-instatement that will be a sufficient relief. In doing so, the Labour Court also took note of the fact that even in the Mill, there were 124 permanent workers and along with them, there were 110 Badlies. The union itself had admitted these facts. The Labour Court also held that because of the settlement reached between the workmen and the Management, there has been gradual reduction of the work force. The Management had switched over from synthetic yarn to natural yarn. Therefore, in several departments, the work force will have to be readjusted. But however it agreed that these workmen had worked during the period from 1979 to 1984. It is in that view of the matter the Labour Court had granted to each worker Rs.35,000/- as compensation.

6. As against the Award, the second respondent Management had filed writ petitions being W.P.Nos.19201 to 19205 of 1994. The said writ petitions were admitted and an order of interim stay was granted on 21.11.1994. Subsequently, despite the fact that the workmen had filed vacate stay application, this Court by a final order dated 30.03.1995 made the stay absolute. After the order was passed by this Court making the stay absolute, the Workmen had come forward to file the present writ petitions. These writ petitions were admitted on 30.10.1996. When these two matters were clubbed together before the learned Judge, the learned Judge by an order dated 11.02.2002 dismissed all the writ petitions (both filed by the management and filed by the workmen).

7. This Court held in paragraph 6 held as follows:
"6.In this case, the Labour Court has exercised its power conferred under Section 11(A). Therefore, though the termination is found legal and valid, still the Labour Court finds that the punishment is unresonable and therefore, it has awarded an amount of Rs.35,000/- as compensation to each of the workers. The Labour court has rightly exercised its power under Section 11(A). This exercise by the Labour court cannot be said to be unreasonable or perverse. Therefore, the award of the Labour Court is confirmed. Both the batch of writ petitions filed by the workers as well as Management are dismissed. Consequently, the connected W.M.Ps are also dismissed."

8. While the Management did not challenge the order, the workmen went on Appeals before the Division Bench being W.A.Nos.1791 to 1795 of 2002. Before moving the Division Bench, the workmen also moved applications in WMP Nos.17857, 17860, 17861, 17859 of 2002, seeking to restore their writ petitions, which according to them were dismissed in their absence. Even that request was rejected by the learned Judge.

9. The Division Bench which heard the Writ Appeals, by an order dated 28.08.2007 allowed the writ appeals and the writ petitions filed by the workmen were restored. In paragraph 2, the Division Bench held as follows:
"2. Challenging the award passed by the Labour Court, the petitioners/appellants have filed the writ petitions. When the writ petitions were listed, name of the counsel was wrongly printed in the cause list as 'Kirubakaran' instead of 'Kirubanandam'. Since name of the counsel was wrongly printed, the counsel could not appear when the cases were called. Because of non appearance of the counsel for the petitioners, all the writ petitions were dismissed. The learned single Judge has dismissed all the petitions for restoration saying that the case numbers were correctly printed in the cause list and no justifiable reasons are made out for non appearance. With due respect, we are unable to endorse the view taken by the learned single Judge. When the name of the counsel has been printed wrongly, naturally the listing of cases might have gone unnoticed. That apart, since the appellants have challenged the award passed by the Labour Court, an opportunity has to be afforded to the petitioners."

10. In view of the remand by the Division Bench, these writ petitions were listed before this Court. However, it must be noted that in respect of the dismissal of the writ petitions filed by the management, challenging that portion of the Award in granting compensation of Rs.35,000/- there is no further challenge by the Management and the award had become final. It is only that portion of the Award by which the Labour Court granted monetary compensation instead of granting relief of reinstatement and backwages, the aggrieved workmen have come before this Court for the third time.

11. The contention raised by the workmen was that the removal of their names on the ground that they had absented themselves for 8 consecutive days in terms of the standing order was invalid , because even after the removal, the workmen had attended work for 13 to 17 days. In the earlier writ petition in W.P.No.10918 of 1990, this Court had held that even removal of name for continuous absence would amount to a termination and therefore inasmuch as no opportunity was given to them, the order of termination was illegal. After the order of remand, parties have let in evidence and also filed documents. It must be noted that the Labour Court in all circumstances was not required to order reinstatement. Depending upon the circumstances of the case, it can also modify the relief of reinstatement into one of lump sum compensation.

12. In the present case, what weighed with the Labour Court was the following factors:
i)The workmen were Badlis and were substituting themselves for the permanent workers if they go on leave.
ii) Even in respect of permanent workers, there was a surplus requirement. Therefore, the workmen even if they had worked, some time they will not get permanency.
iii)Like the petitioners, there were as many as 110 Badlies and their services were engaged on daily basis depending upon the requirements of the day.
iv)There was no monthly payment to these workmen.
v)The mill was also facing a readjustment problem on account of switching over from synthetic yarn to natural yarn.

13. It is under these circumstances the Labour Court, notwithstanding the fact about their pleading of illegal termination decided to grant lump sum compensation by taking into account the over all circumstances of the case and the 5 years service put in by the workers, the compensation was arrived at Rs.35,000/-. Even arriving at the compensation, the Labour Court in its Award at Paragraph 29 held that though in the claim statement, the workmen had stated their monthly wages may be approximately Rs.1200/-, W.W.1 in his evidence had stated that the monthly wages was Rs.950/-. Therefore, the Labour Court held that compensation of Rs.35,000/- will be sufficient relief

to the workmen.

14. Mr.M.Govindaraj, the learned counsel for the petitioner contended that once if it was held that the termination was illegal, then the relief of reinstatement with backwages is the Rule. However, in the present case admittedly, the workmen are Badlis and not regular workers. In the absence of appointment to a post, the question of reinstating them without the existence of a post may not arise. It is not as if the petitioners are claiming that on account of the Tamil Nadu Permanent Status Act 1981, they have claimed to have become permanent. On the contrary, the only contention was that before their termination, there was no proper enquiry and even after the alleged absence they were allowed to work. But such questions will have a bearing on only proving whether the workmen had committed misconduct or not but it may not have any relevance in the grant of relief. Grant of relief is a discretion vested on the Labour Court . The Labour Court will have to necessarily take into account in deciding the relief, viz., nature of employment, delay in reference, the status of workmen and other relevant factors.

15. Therefore, this Court do not find any infirmity or illegality in the order passed by the Labour Court. It must also be noted in the first round of litigation, the Labour Court had granted only Rs.2,000/- as compensation, which was fortunately set aside by this Court during the first round of attack against the initial found.

16. With reference to the power of this Court in interfering with an Award granting compensation in lieu of reinstatement, it is necessary to refer to the decision of the Supreme Court in Madhya Pradesh Admn. v. Tribhuban,(2007) 9 SCC 748. In paragraph 12, it was observed as follows:-
"12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25-F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein."

17. In the light of the above, all the writ petitions will stand dismissed. No costs.

12.03.2010
Index:Yes/No
Internet:Yes/No
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To
The Presiding Officer,
Labour Court, Coimbatore.

K.CHANDRU,J.
Svki

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